COMMODITY FUTURES TRADING COMMISSION

Boards of Trade Located Outside of the United States and the Requirement to Become a Designated Contract Market or Derivatives Transaction Execution Facility

AGENCY: Commodity Futures Trading Commission

ACTION: Request for Comment

SUMMARY: The Commodity Futures Trading Commission (Commission) is publishing this request for comment in advance of a public hearing scheduled for June 27, 2006.[1] The purpose of the hearing is to solicit the views of the public on how to identify and address certain issues with respect to boards of trade established in foreign countries and located outside the U.S. (foreign board of trade or FBOT). Specifically, the Commission wishes to address the point at which an FBOT that makes its products available for trading in the U.S. by permitting direct access to its electronic trading system from the U.S. (direct access) is no longer "located outside the U.S." for purposes of Section 4(a) of the Commodity Exchange Act (Act). If it is determined that the FBOT is not "located outside the U.S.," it becomes subject to Section 4(a) and may be required to become a designated contract market (DCM) or derivatives transaction execution facility (DTEF).

Currently, FBOTs that wish to permit direct access do so pursuant to Commission staff no-action letters (terminal placement no-action letter) in which Commission staff represents that it will not recommend that the Commission institute enforcement action against the FBOT or its members if the FBOT, subject to certain conditions, permits direct access without becoming a DCM or DTEF. Terminal placement no-action letters

[1] *See* Sunshine Act Meeting Notice, 71 FR 30665 (May 30, 2006); corrected at 71 FR 32059 (June 2, 2006).

state that Commission staff will examine trade volume information submitted by the FBOT, including volume generated through U.S. terminals, and any change in the nature or extent of the FBOT's activities in the U.S., to ascertain whether such trade volume or FBOT activities might warrant reconsideration of the no-action relief because the FBOT may no longer be "located outside the U.S." for the purposes of Section 4(a) of the Act.

Terminal placement no-action letters do not, however, identify the specific circumstances when no-action relief is no longer appropriate. In order to promote regulatory clarity in this area, the Commission is considering whether to set forth objective criteria for determining when an FBOT is no longer "located outside the U.S." for purposes of Section 4(a) of the Act. In order to foster useful discussion and provide transparency with respect to the Commission's determinations in this area, the Commission is issuing this request for comment to solicit public views regarding issues raised herein. The Commission also believes that this request for comment should help generate and guide discussion on this same topic at its June 27, 2006, public hearing.

DATES: Comments must be received by July 12, 2006.

ADDRESS: Comments should be sent to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, attention: Office of the Secretariat. Comments may be sent by facsimile transmission to 202-418-5521 or, by email to secretary@cftc.gov. Reference should be made to "What Constitutes a Board of Trade Located Outside of the United States." Comments may also be submitted to the Federal eRulemaking Portal: http://www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: David P. Van Wagner, Chief Counsel, (202) 418-5481, email dvanwagner@cftc.gov; or Duane C. Andresen, Special

Counsel, (202) 418-5492, email dandresen@cftc.gov; Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, N.W., Washington, D.C. 20581.

SUPPLEMENTARY INFORMATION:

I. Background

Generally, under Section 4(a) of the Act,[2] a futures contract may be executed lawfully in the U.S. only if it is traded on or subject to the rules of a board of trade that has been designated as a DCM or registered as a DTEF (for ease of reference, hereinafter referred to as DCM/DTEF registration) pursuant to Section 5 or 5a of the Act,[3] respectively, unless the contract is either (i) traded on or subject to the rules of a board of trade, exchange or market located outside the U.S. or (ii) exempted from the Act pursuant to Section 4(c).[4] Accordingly, an FBOT that permits direct access that is not located outside the U.S. for purposes of Section 4(a) may be required to obtain DCM/DTEF

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[2] 7 U.S.C. 6(a) (2002).

[3] 7 U.S.C. 7 and 7a (2002).

[4] Section 4(a) of the Act states in relevant part:
[I]t shall be unlawful for any person to offer to enter into, to enter into, to execute, to confirm the execution of, or to conduct any office or business anywhere in the United States, its territories or possessions, for the purpose of soliciting or accepting any order for, or otherwise dealing in, any transaction in, or in connection with, a contract for the purchase or sale of a commodity for future delivery (other than a contract which is made on or subject to the rules of a board of trade, exchange, or market located outside the United States, its territories or possessions) unless--

(1) such transaction is conducted on or subject to the rules of a board of trade which has been designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity;

(2) such contract is executed or consummated by or through a contract market; and

(3) such contract is evidenced by a record in writing….

Section 4(c) of the Act provides the Commission with authority "by rule, regulation, or order" to exempt "any agreement, contract, or transaction" from the requirements of Section 4(a) of the Act if the Commission determines that the exemption would be consistent with the public interest, that the contracts would be entered into solely between appropriate persons, and that the exemption would not have a material adverse effect on the ability of the Commission or any contract market or derivatives transaction execution facility to discharge its regulatory or self-regulatory duties under the Act. 7 U.S.C. 6(a) and 6(c) (2002).

registration absent an exemption under Section 4(c) of the Act. The Commission is considering adopting objective standards that would identify a threshold level of presence in the U.S. at which such an FBOT would no longer be considered to be located outside the U.S. for purposes of Section 4(a) of the Act. When such an FBOT crosses that threshold, it would become subject to Section 4(a) and could, accordingly, be required to seek DCM/DTEF registration.

The Commission has previously addressed this issue on several occasions. On July 24, 1998, the Commission published in the *Federal Register* a Concept Release seeking public comment on issues related to permitting the use in the U.S. of automated trading systems providing access to electronic boards of trade otherwise primarily operating outside the U.S.[5] On September 24, 1998, the Commission's Global Markets Advisory Committee (GMAC) met to consider the issues raised in the Concept Release.[6] On March 24, 1999, the Commission published in the *Federal Register* proposed rules that would have, among other things, established a procedure for an electronic exchange operating primarily outside the U.S. to petition the Commission for an order that would permit use of automated trading systems that provide access to the board of trade from within the U.S. without requiring the board of trade to be designated as a U.S. contract market.[7] During the comment period on the proposed rules, the Commission held a Public Roundtable to discuss the issues raised.[8]

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[5] 63 FR 39779 (July 24, 1998).

[6] The Report of the GMAC Working Group on Electronic Terminals can be found on the Commission's website at http://www.cftc.gov/files/foia/comment98/foicf9830b004.pdf.

[7] 64 FR 14159 (March 24, 1999).

[8] A transcript of the Public Roundtable can be found on the Commission's website at http://www.cftc.gov/files/foia/comment99/foicf9911b001a.pdf.

On June 2, 1999, the Commission issued an order that withdrew the proposed rules and committed the Commission to "proceed expeditiously toward adoption of rules and/or guidelines" with respect to foreign boards of trade seeking to place trading terminals in the U.S. and "to simultaneously initiate processes to address the comparative regulatory levels between U.S. and foreign electronic trading systems so as not to provide one with a competitive advantage."[9] The order instructed Commission staff to begin immediately processing no-action requests from foreign boards of trade seeking to place trading terminals in the U.S., and to issue responses where appropriate, pursuant to the general guidelines that had been followed in the process that resulted in the issuance of the 1996 Eurex (DTB) no-action letter.[10] Since the withdrawal of the proposed rulemaking, Commission staff has processed no-action requests from FBOTs seeking to permit direct access and issued terminal placement no-action letters pursuant to the general guidelines included in the Eurex (DTB) no-action process.

On June 30, 2000, noting that one year had passed since the first terminal placement no-action letter was issued and that seven such letters had been issued,[11] and in

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[9] The order is published in the *Federal Register* at 64 FR 32829, 32830 (June 18, 1999). In the *Federal Register* release, the Commission stated that it was apparent from the comments received on the proposed rules, and from the wide-ranging positions on the issues as outlined at the Roundtable Discussion and in the meeting of the Commission's GMAC, that further consensus needed to be sought before rules or guidelines could be finalized. Accordingly, the Commission determined to withdraw the proposed rules and defer adoption of final rules or guidelines pending further consideration of those issues.

[10] In February 1996, Commission staff issued a no-action letter to the Deutsche Terminborse (DTB), an all-electronic futures and option exchange headquartered in Frankfurt, Germany, in which Commission staff agreed, subject to certain conditions, not to recommend enforcement action to the Commission if DTB placed computer terminals in the U.S. offices of its members. CFTC Staff Letter No. 96-28 (February 29, 1996). DTB changed its name to Eurex on June 8, 1998, in anticipation of the business combination between DTB's administrative and operating institution, Deutsche Boerse AG, and the Swiss Exchange, the parent company of the Swiss Options and Financial Futures Exchange (SOFFEX).

[11] Commission staff had issued no-action letters to LIFFE (CFTC Staff Letter No. 99-31, July 23, 1999); Parisbourse SA (CFTC Staff Letter No. 99-33, August 10, 1999); Sydney Futures Exchange Ltd. (SFE) (CFTC Staff Letter No. 99-37, August 10, 1999); Eurex Deutschland (CFTC Staff Letter No. 99-48, August 10, 1999); International Petroleum Exchange (IPE) (now ICE Futures) (CFTC Staff Letter No. 99-69, November 12, 1999); Singapore Exchange Ltd. (now SGX-DT) (CFTC Staff Letter No. 99-63,

light of the staff's experience with the relief thus provided, the Commission issued a policy statement permitting FBOTs that had received terminal placement no-action letters to make additional futures and option contracts available for trading through their electronic trading systems in the U.S. without obtaining written, supplemental no-action relief from Commission staff.[12] Under that policy statement, subject to minor exceptions, FBOTs seeking to list additional contracts for direct access would, on the business day prior to listing, submit to Commission staff: (1) a copy of the initial terms and conditions of the additional contracts, and (2) a certification that the FBOT was in compliance with the terms and conditions of the no-action letter and that the additional contracts would be traded in accordance with those same terms and conditions. Since the issuance of the policy statement, nine terminal placement no-action letters have been issued.[13]

In January 2006, Commission staff issued a letter stating that the Commission would be evaluating the use of the terminal placement no-action process.[14] Currently,

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December 17, 1999); and Hong Kong Futures Exchange Ltd. (HKFE) (CFTC Staff Letter No. 00-75, June 9, 2000).

[12] Notice of Statement of Commission Policy Regarding the Listing of New Futures and Option Contracts by Foreign Boards of Trade that Have Received Staff No-Action Relief to Place Electronic Trading Devices in the United States, 65 Fed. Reg. 41641 (July 6, 2000). The policy statement did not apply to futures and option contracts covered by Section 2(a)(1)(B) of the Act. The policy statement was rescinded and the advance notification requirement was revised on April 14, 2006. 71 FR 19877 (April 18, 2006); corrected at 71 FR 21003 (April 24, 2006).

[13] No-action letters have been issued to: OM London Exchange Ltd. (CFTC Staff Letter No. 00-93, September 21, 2000); Eurex Zurich Ltd. (CFTC Staff Letter No.00-104, November 16, 2000); London Metal Exchange Limited (LME) (CFTC Staff Letter No. 01-11, March 12, 2001); Bourse de Montreal Inc. (CFTC Staff Letter No. 02-24, February 27, 2002); MEFF (CFTC Staff Letter No. 02-29, March 8, 2002); European Energy Exchange (EEX) (CFTC Staff Letter No. 04-33, October 25, 2004); Winnipeg Commodity Exchange (WCE) (CFTC Staff Letter No. 04-35, December 15, 2004); Euronext Amsterdam (CFTC Staff Letter No. 05-16, August 26, 2005); and NYMEX Europe Limited (NEL) (CFTC Staff Letter No. 05-24, December 16, 2005). No such letters have been issued since the policy statement was revised.

[14] Letter from Richard Shilts, Director, Division of Market Oversight, to Mark Woodward, Regulation and Compliance Policy Manager, ICE Futures, dated January 31, 2006, in response to ICE Futures January 17, 2006, letter notifying Commission staff of its intent to launch a West Texas Intermediate Light Sweet Crude Oil Futures Contract (WTI Contract) on February 3, 2006. Notably, the WTI Contract was the first futures contract listed for trading by an FBOT permitting direct access pursuant to a terminal placement no-action letter for which the product ultimately underlying the futures contract was produced, traded and

Commission staff generally examines the following when reviewing an FBOT's request for terminal placement no-action relief: general information about the FBOT, as well as detailed information about: (i) membership criteria (including financial requirements); (ii) various aspects of the automated trading system (including the order-matching system, the audit trail, response time, reliability, security, and, of particular importance, adherence to the IOSCO principles for screen-based trading); (iii) settlement and clearing (including financial requirements and default procedures); (iv) the regulatory regime governing the FBOT in its home jurisdiction; (v) the FBOT's status in its home jurisdiction and its rules and enforcement thereof (including market surveillance and trade practice surveillance); and (vi) extant information-sharing agreements among the Commission, the FBOT, and the FBOT's regulatory authority. When issued, the terminal placement no-action letters conclude with a standard set of terms and conditions for the granting of the relief which include, among other things, a quarterly volume reporting requirement.

In the context of its evaluation of the use of the terminal placement no-action process, the Commission may either continue to have its staff issue foreign terminal no-action letters or propose and adopt rules that would codify the current no-action process as a rule-based regime that would entail the Commission's issuance of terminal placement orders. Irrespective of the approach taken, any FBOT seeking to permit direct

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stored principally in the U.S., and the commercial participants trading the underlying product were mostly located in the U.S. (The ICE Futures WTI Contract is itself not a physically-settled contract. Rather, it cash settles off of the settlement price set by the New York Mercantile Exchange's physically-settled WTI contract.)

access would have to be a bona fide board of trade subject to a regulator that provides for effective oversight.[15]

In addition, and also as part of the Commission's evaluation of the use of the no-action process, on May 3, 2006 the Commission instructed staff to initiate a formal process, including a public hearing conducted by the Commission, to define what constitutes "a board of trade, exchange, or market located outside the United States, its territories or possessions" as that phrase is used in Section 4(a) of the Act.

II. Request for Comment

The Commission solicits comment from the public on the issues related to an objective standard establishing a threshold that, if crossed by an FBOT that permits direct access, would indicate that the board of trade is no longer outside of the U.S. and, accordingly, may be required to become registered as a DCM/DTEF. The Commission notes that any action taken in this area would be taken to ensure that the Commission is able to carry out its obligations under the Act to maintain the integrity of the U.S. futures markets, to protect the public interest with respect to transactions entered into in interstate and international commerce, and to provide protection to U.S. customers. At the same time, the Commission recognizes that cross-border trading is a growing segment of the trading volume for all futures exchanges, both foreign and domestic. Accordingly, in

[15] In the Concept Release, the Commission described the foreign board of trade that it assumed would petition the Commission for an order to place its terminals in the U.S. as a *bona fide* board of trade that is subject to an established rulemaking structure. The Commission stated that this view was consistent with Congressional intent with respect to what is meant by the term "foreign board of trade" under the Act. It noted that the legislative history suggested that when Congress amended the Act in 1982, it intended that the exclusion of futures contracts traded on "a board of trade, exchange or market located outside the United States" from the off-exchange ban in Section 4(a) of the Act to apply only to "bona fide foreign futures contracts" traded in a regulated exchange environment. *See* S. Rep. 384, 97th Cong., 2d Sess. 45-47, 84-85 (1982); H.R. Rep. No. 565, Part I, 97th Cong., 2d Sess. 84-85 (1982). The Commission further stated that, consistent with Congressional intent, the Part 30 rules do not permit the offer and sale in the U.S. of foreign futures or options that are not executed on or subject to the rules of a foreign board of trade. 63 FR 39779, 39788.

formulating its regulatory approach the Commission will strive to ensure that it neither inhibits cross-border trading nor imposes unnecessary regulatory burdens.

1. The Level of U.S. Presence and the Requirement for DCM/DTEF Registration

In the March 24, 1999, proposed rules, the Commission stated that any FBOT that wishes to permit direct access can be required to register if the FBOT is not subject to a generally comparable regulatory structure or if the FBOT has been established and structured purposefully to evade U.S. regulation.[16] In the Concept Release and the proposed rules, the Commission indicated that at some level of U.S. activity, an FBOT that provides direct access can no longer claim to be outside the U.S. and should be required to be designated.[17] The Commission specifically mentioned the presence of FBOT activities and personnel in the U.S., as well as trading volume on the FBOT originating in the U.S.[18] The Commission also indicated that an FBOT's main business activities must take place outside of the U.S. (*i.e.*, its management, back office operations, order matching/execution facilities, clearing facilities, and the vast majority of its personnel must be located outside the U.S.).[19] As discussed above, however, the proposed rules were subsequently withdrawn.

The Commission is seeking comments with respect to whether the extent of the FBOT's presence in the U.S. is an appropriate threshold, particularly in light of the capability to contract out various exchange activities to entities in different jurisdictions.

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[16] 64 FR 14159, 14160.

[17] 63 FR 39779, 39787; 64 FR 14159, 14167.

[18] 63 FR 39779 at 39787-8; 64 FR 14159 at 14167 and 14170.

[19] *Id.* at 14167.

If the extent of the FBOT's presence in the U.S. is an appropriate threshold, what level of presence would be a reasonable threshold for determining whether to require DCM/DTEF registration? What factors should be considered in making such a determination, and what level of activities should trigger a U.S. registration requirement? Could a comprehensive list of exchange activities be established and used for the purposes of determining when these activities warrant registration? Would a more focused U.S. presence criteria be more helpful, such as the location of the governing board or executive level management, *i.e.*, where the critical business decisions are made?[20] If the FBOT organizes its business as a U.S. entity, should registration be required even if most of its activities take place outside the U.S.?

The Commission previously has indicated that trade volume from within the U.S. is relevant in assessing whether a board of trade's contacts in the U.S. are so extensive that the FBOT should be required to be registered as a DCM.[21] In the proposed rules, subsequently withdrawn, the Commission proposed that FBOTs report quarterly for each contract available to be traded through direct execution systems and automated order routing systems (AORS) located in the U.S. the total trade volume originating from such systems located in the U.S and total trade volume worldwide from any source.[22]

FBOT trading volume that is attributable to direct access from the U.S. may trigger a unique regulatory interest. Direct access to an FBOT's trading platform enables

[20] The Commission understands that at least one foreign regulator, the U.K. Financial Services Authority, views this factor as critical in determining whether an exchange is foreign or domestic.

[21] 64 FR 14159, 14170.

[22] *Id* at 14177. Direct execution system was defined as any system of computers, software or other devices that allows entry of orders for products traded on a board of trade's computer or other automated device where, without substantial human intervention, trade matching or execution takes place. AORS was defined as any system of computers, software or other devices that allows entry of orders through another party for transmission to a board of trade's computer or other automated device where, without substantial human intervention, trade matching or execution takes place.

U.S. market participants to directly interact with a market, including observing prices, bids, offers and the depth of market in real-time, making trading decisions and executing orders in a non-intermediated, non-filtered manner. Notably, in the proposed rules that were subsequently withdrawn, the Commission stated that boards of trade that were accessible from within the U.S. via trading screens, the internet, or other automated trading systems were not "located outside the U.S." for purposes of Section 4(a) of the Act.[23]

Currently, FBOTs with terminal placement no-action letters report to Commission staff quarterly the volume originating from the U.S. and the worldwide volume for those contracts available for direct access from the U.S.[24] The Commission is seeking comments with respect to whether the volume originating from the U.S. is an appropriate criterion. If so, should the Commission consider overall volume, such that if some percentage of the overall volume for those contracts available for direct access from the U.S. originated in the U.S., the FBOT would be required to register? What, if any, U.S. volume percentage figure could serve as a reasonable threshold level?

What does providing direct access to its electronic trading system from the U.S. mean in terms of the volume that should be counted? Should orders transmitted via AORS from the U.S. to firms located outside the U.S. for entry into the trading system be counted as U.S. volume for purposes of determining whether any volume threshold has

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[23] *Id.* at 14160. In the release accompanying its subsequently withdrawn proposed rules, the Commission distinguished direct access trading and order placement via AORS from an order placed by telephone with a firm that is registered with the Commission as a futures commission merchant or that is exempt from such registration pursuant to Commission Rule 30.10 Firm in that a customer placing an order by telephone would not be entering an order on a board of trade's computer or other automated device where trade matching or execution takes place. Id. at 14171.

[24] When computing the percentage of volume originating from the U.S., Commission staff does not include the volume of any FBOT contracts which are not available for direct access.

been crossed?[25] Should orders transmitted via telephone from the U.S. to firms located outside the U.S. for entry into the trading system be counted as U.S. volume for purposes of determining whether any volume threshold has been crossed?[26]

If volume emanating from the U.S. is deemed to be a relevant criterion, should the Commission measure volume on a contract-by-contract basis, and require that the FBOT seek registration only with respect to those individual contracts that exceed a percentage threshold? Does percentage of volume in contracts from the U.S. alone create a meaningful threshold?[27]

Notwithstanding a contract's level of volume from the U.S., the nature of certain contracts made available by FBOTs for direct access also might independently implicate the Commission's regulatory interests. Specifically, the Commission's regulatory interests may extend to FBOT contracts with an underlying product whose cash market impacts interstate commerce in the U.S., such as where prices of the underlying product are discovered principally in the U.S., the underlying product is produced, created and held principally in the U.S., and commercial participants trading the underlying product are mostly located in the U.S.

One of the primary purposes of regulating futures contracts is to ensure fair and orderly markets for U.S. producers and other commercial participants who use such

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[25] The Commission in this process is not considering whether to regulate AORS generally, and seeks comments only as to whether and how to measure volume generated through AORS in determining whether a board of trade is located outside the U.S.. Staff believes that the volume data currently reported by FBOTs quarterly does not include as volume originating from the U.S. an order transmitted from the U.S. via AORS and entered into the trading system by a firm located outside the U.S.

[26] Staff believes that the volume data currently reported by FBOTs quarterly does not include as volume originating from the U.S. an order transmitted from the U.S. via telephone and entered into the trading system by a firm located outside the U.S.

[27] If more than 50 percent of the volume of an FBOT's contract originates in the U.S., then it is unlikely that any other country can demonstrate a greater interest in that contract.

contracts for price basing or hedging. Accordingly, would it be appropriate for the Commission to exercise jurisdiction over FBOTs that permit direct access when they list contracts with underlying products that are integral to the U.S. economy? If the Commission were to take special cognizance of such contracts, should it do so independently of, or in conjunction with, the type of U.S. volume threshold mentioned above? If such contracts were analyzed in conjunction with a volume test, would it be appropriate for the Commission to set the U.S. volume threshold at a lower level than it would for contracts whose underlying products do not have a significant U.S. cash market? What are the implications generally for the business activities and organization of an FBOT of requiring designation on a contract-by-contract basis?

2. DCM Designation Criteria, DTEF Registration Criteria and Core Principles

As indicated above, Section 4(a) of the Act requires that a futures contract may only be executed lawfully in the U.S. only if it is traded on or subject to the rules of a board of trade that has been designated as a DCM or registered as a DTEF, unless the contract is traded on a board of trade located outside the U.S. or is exempted from Section 4(a) pursuant to Section 4(c). Accordingly, if an FBOT that permits direct access engaged in a level of U.S. activity such that it was no longer considered to be located outside the U.S. under a Commission-prescribed standard, the FBOT would have to either obtain DCM/DTEF registration or be granted Section 4(c) exemptive relief (as discussed above, at least with respect to those contracts that meet the applicable threshold).

In determining its policy regarding FBOTs that become subject to Section 4(a) in these circumstances, the Commission notes that, consistent with its obligations with respect to any market that implicates Section 4(a), its paramount obligations would be to maintain the integrity of the FBOT's futures markets and to provide protection to U.S. customers using those markets. Along with those responsibilities, however, the Commission would seek to avoid any measures that would stifle cross-border trading or create unnecessary regulatory burdens.

The Commission anticipates that FBOTs that become subject to Section 4(a) under any Commission-prescribed standard would be required to apply for DCM designation (or DTEF registration) and to demonstrate compliance with the DCM designation criteria and core principles in Section 5 of the Act in accordance with the procedures described in Parts 38 and 40 of the Commission's regulations (or with the DTEF registration criteria and core principles in Section 5a of the Act in accordance with Parts 37 and 40 of the Commission's regulations). Furthermore, once the FBOT became registered as a DCM/DTEF, the Commission would expect the DCM/DTEF to continue to meet the requirements of the designation/registration criteria and core principles with respect to any contracts for which it was required to designate/register.

Notably, the Act's designation/registration criteria and core principles are non-prescriptive and can be satisfied in different ways, including by rules and procedures that may have originally been adopted to satisfy the requirements of a foreign regulatory regime. In fact, in conducting an analysis of foreign regulatory programs, the Commission may determine that core principles are already being met. Accordingly, in situations such as this, requiring DCM/DTEF registration of FBOTs that are no longer

considered to be located outside of the U.S. should not pose an undue burden on the board of trade or a material impediment to cross-border business. Similarly, the Commission could recognize a board of trade's prior experiences with particular rules and procedures in evaluating whether the board of trade would likewise satisfy the Commission's requirements for DCMs/DTEFs.

In the interest of reducing any burden that may arise at either the exchange or regulator level due to the dual regulation, the Commission also notes that it would always have the discretion to work out appropriate arrangements to rely on the foreign regulator for assistance in ensuring that a DCM/DTEF continues to meet the designation/registration requirements. The Commission particularly solicits comments on which, if any, areas of its regulatory oversight responsibilities may be appropriate for such reliance. Should the Commission establish a standardized approach to such reliance on foreign regulatory authorities, or should coordination of these oversight responsibilities be done on a case-by-case basis. Alternatively, should the Commission consider using its Section 4(c) authority to create a special exchange registration category for boards of trade that become subject to Section 4(a) in these limited circumstances? If so, what substantive requirements should apply to such a category?

Issued in Washington, DC on June 8, 2006 by the Commission.

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Eileen Donovan
Acting Secretary of the Commission